

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,  
individually and on behalf of a class of all others  
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

**PLAINTIFFS' NOTICE OF MOTION AND MOTION TO  
COMPEL DISCOVERY AND FOR SANCTIONS AGAINST  
DEFENDANT CITY AND ROBERT E. QUINN PERSONALLY**

**PLEASE TAKE NOTICE** that on a date to be set by the Court on or after October 21, 2021, Plaintiffs will move this Court for the following relief:

1. Pursuant to Fed. R. Civ. P. 16, 26, and 37, compelling the discovery, and ordering the procedures, set forth in the Proposed Order annexed hereto.
2. Pursuant to Fed. R. Civ. P. 37(a)(5)(A) and 37(d)(2)(C), awarding Plaintiffs their costs and expenses of this motion plus the expenses Plaintiffs incurred by reason of Defendants' failure to comply with this Court's May 11, 2021 order regarding ECAC ESI production, in both cases against Defendants and their counsel jointly.
3. Pursuant to 28 U.S.C. § 1927, awarding Plaintiffs additional monetary sanctions against Robert E. Quinn, Esq., personally.

In support of this motion, Plaintiffs file a Memorandum of Law and the Declaration of Edward P. Krugman, with accompanying attachments. Plaintiffs affirm that they have in good faith

conferred with Defendants in an effort to obtain relief without court action, but as set forth in detail in the Krugman Declaration were not successful in doing so.

Pursuant to Local Rule 7(a)(1), Plaintiffs hereby state that they intend to file and serve reply papers. Pursuant to Local Rule 7(b)(2)(B), if the Court does not set deadlines by order, any opposition will be due within fourteen days of today, and any reply papers will be due within seven days of the filing of opposition papers.

Dated: September 28, 2021

Respectfully Submitted,

/s/ Keisha A. Williams

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/s/ Edward P. Krugman

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**[PROPOSED] ORDER RE DISCOVERY**

Plaintiffs having moved to compel discovery by Defendants, and for related relief, it is hereby **ORDERED** pursuant to Rules 16, 26, and 37 of the Federal Rules of Civil Procedure as follows:

1. ***Form of Production.*** All production of electronically stored information (ESI) by Defendant City of Buffalo (the “City”) shall include metadata at the same level of detail as was produced on May 17 and May 31, 2021.

2. ***ESI Searches of Additional Custodians to Be Performed Now.*** The City shall perform searches of the ESI of the custodians set forth in this paragraph (the searches to include both e-mails and other ESI), with the search terms indicated, and shall produce the responsive documents located thereby.

(a) Search Terms

- (i) The search terms to be used consist of a set of “core terms,” which apply to every custodian, plus additional custodian-specific terms as set forth below.
- (ii) Each of these terms includes certain equivalents, as set forth in Exhibit A hereto.

- (iii) The “core terms” are check-point, road-block, impound, tint, tow, discriminat, rac, profil, bias, revenue, road check, zero tolerance, numbers, stop receipt/report, school/speed zone.

(b) Custodians

- Chief Carmen Menza: Core terms, plus housing, strike-force, hot pocket, hotspot
- P.O. Robbin Thomas: Core terms, plus east side, traffic-stop, complain\*, Internal Affairs Department (IAD)
- P.O. William Macy: Core terms
- Deputy Comm’r Joseph Gramaglia: Core terms, plus traffic-stop, lawsuit, strike-force, summons, budget, hot pocket, hotspot, high crime, violent crime, high visibility, traffic/roadway safety
- Michael DeGeorge: Core terms
- Insp. Robert Rosenswie: Core terms plus traffic-stop, strike-force, summons, Hy, Hassett, Zak.
- Insp. Harold McClellan: Core terms plus traffic-stop, strike-force, summons, Hy, Hassett, Zak.

Production under this paragraph shall be complete by \_\_\_\_\_, 2021.

3. ***Additional ESI Searches for Custodians Previously Searched.*** The City shall conduct additional searches of the ESI (both e-mail and non-e-mail) of custodians previously searched, and produce the responsive documents located thereby, as follows:

<i>Custodians</i>	<i>Search Terms</i>
Brown, Lockwood, Rinaldo, Serafini, Young	school/speed zone, zero tolerance, numbers, stop receipt/report, traffic/roadway safety, Hy, Hassett, Zak
Helper, Morgera, Russo, Wilcox, McLean, Burke, Quinn, Strobele	school/speed zone, zero tolerance, numbers, stop receipt/report
Derenda, Brinkworth	High visibility, zero tolerance, numbers, Hy, Hassett, Zak
Mann, Beatty, Roberts	High visibility, zero tolerance, numbers

Production under this paragraph shall be complete by \_\_\_\_\_, 2021.

4. ***ESI Production for Witnesses Who Will Be Deposed.*** If any of the individuals listed in this paragraph becomes a deposition witness, the City shall search for such witness's ESI (e-mail and non-e-mail) and shall produce responsive documents no later than three weeks before the deposition. Inclusion of an individual in this paragraph says nothing, one way or the other, about whether that individual will in fact be deposed; it simply sets forth the ESI search parameters for the witness in the event the deposition is scheduled.

- (a) The individuals are Officers M. Acquino, Domaracki, M. Healy, Hy, Hassett, Whiteford, Wigdorski, Tedesco, and Miller, and Chief Barba.
- (b) For all individuals except Chief Barba, the search terms are the core terms plus east-side, traffic-stop, complain\*, and Internal Affairs Department (IAD).
- (c) For Chief Barba, the search terms are the core terms plus housing, strike-force, hot pocket, hotspot, complain\*.

5. ***Drafts of JAG Applications:*** The City shall search for drafts of the applications for Judicial Assistance Grants for the period 2011 to the present, as well as e-mails or other correspondence relating to the drafting process, and shall produce such non-privileged documents and/or ESI as are located. The search shall be limited to the physical and electronic files of Maureen Oakley and any other physical or electronic files specifically identified to the JAGs. Production under this paragraph shall be complete by \_\_\_\_\_, 2021.

6. ***ECAC Project Files.*** The City shall complete production by \_\_\_\_\_, 2021, of all Erie Crime Analysis Center files for projects identified as having been performed for a Chief-level or higher official of the BPD. Production shall include, as to each project, identification of the project and the BPD official for whom was conducted. The City shall supply the same data for projects as to which production has already been made.

7. ***ECAC E-mail Production.*** The City shall make production as follows from all ECAC-related e-mail accounts to which it has access:

- (a) Custodians:
  - Wrona
  - Schellinger
  - Billanti
  - Giammaresi
- (b) Scope:
  - e-mails to or from BPD e-mail addresses hitting the search terms below
  - internal e-mails between any of the three analysts and Mr. Giammaresi hitting any of those search terms
- (c) Search terms:
  - full original set, plus
  - hot pocket, hot spot, high visibility, zero tolerance, road check, roadway safety, traffic

The City shall complete ECAC e-mail production no later than \_\_\_\_\_, 2021. Production shall include all responsive e-mails from Jamie.giammaresi@dcjs.state.ny.us unless by \_\_\_\_\_, 2021, the City submits an affidavit stating that it does not have, and never has had, access to that account.

8. The City shall, by \_\_\_\_\_, 2021, complete production of any paper or electronic files specifically identified to any of the iterations of the GIVE (Gun-Involved Violence Elimination) program, or its predecessor IMPACT program, that were maintained by regular attendees at the periodic GIVE or IMPACT meetings.

9. **ENTCAD Database.** In order to permit Plaintiffs to assess the need for further production, and in light of the City's representation that there is no field list or coding manual for the ENTCAD (Dispatch) database, the City shall, no later than \_\_\_\_\_, 2021, produce every entry in the ENTCAD database for (a) June 24, 2015 and (b) April 27, 2017. Production shall be on an attorneys'-eyes-only basis and shall be used by Plaintiffs' counsel solely for the purpose of determining the scope of overall production to be sought from the database. If, within 30 days after

production of the two sample days, the parties are unable to reach agreement on the scope of over-all production to be made from the ENTCAD database, the matter shall be submitted to the Court on papers for resolution.

10. ***Housing Unit/Strike Force Overtime Reports.*** The City shall complete production of all such reports (January 1, 2012 to the present) no later than \_\_\_\_\_, 2021.

11. ***Native Production of Prior .pdfs.*** To the extent, but only to the extent, that e-mails produced as .pdfs prior to May 17, 2021 have been segregated and are available without needing to redo the searches that led to their production, the City shall re-produce those e-mails in native format, including attachments and metadata, together with an affidavit describing in general terms which e-mails met the availability criteria of this paragraph and which did not.

12. ***RFP ##97-99.*** For each current or former BPD employee whom Plaintiffs depose in this action, the City shall search for, and produce no later than seven days before the deposition, all documents responsive to Requests 97-99 that relate to that witness, provided that Requests 97(i) and 97(ii) are limited to complaints and BPD misconduct investigations concerning racial profiling, biased policing, checkpoints, towing/impound, and traffic enforcement.

Dated: \_\_\_\_\_ 2021

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United States District Judge

**EXHIBIT A TO ORDER RE DISCOVERY**

Each of the search terms below includes the equivalents listed.

<b>Search Term</b>	<b>Includes</b>
bias	bias, biased
BPD-HU	BPD-HU, HU
budget	budget, budgets, budgetary
camera	camera, cameras
check-point	check-point, checkpoint, check point, checkpoints, check points
complain*	complain, complainant, complained, complaint, complaints, complt
crackdown	crackdown, crack down
discriminat	discriminate, discriminates, discriminated, discriminatory, discrimination
east-side	eastside, east side
Erie Crime Analysis Center (ECAC)	Erie Crime Analysis Center, ECAC
high crime	high crime, high-crime, highcrime
high visibility	high visibility
hot pocket	hotpocket, hot pocket, hotpockets, hot pockets
Hotspot	hotspot, hot spot, hotspots, hot spots
housing	housing
impound	impound, impounds, impounded
Internal Affairs Department (IAD)	Internal affairs, IAD
law-suit	lawsuit, law suit, lawsuits, law suits, law-suit
numbers	numbers (plural only; “number” is not a hit)
profil	profile, profiled, profiling
quota	quota, quotas
rac	race, racial, racist, racism
revenue	revenue, revenues
road check	road check, roadcheck, road checks, road check, road-check, road-checks



<b>Search Term</b>	<b>Includes</b>
road-block	roadblock, road block, roadblocks, road blocks, road-block, road-blocks
roadway safety	roadway safety, roadway-safety
safety-check	safety check, safety checks
school/speed zone	school zone, speed zone
stop receipt/report	stop receipt, stop receipts, stop report, stop reports
strike-force	strikeforce, strike force, SF, strike-force
summons	summons, summonses
ticket	ticket, tickets, ticketing
tint	tint, tints, tinted
tow	tow, towed
traffic safety	traffic safety, traffic-safety
traffic-stop	traffic stop, traffic stops
violent crime	violent crime, violent crimes
zero tolerance	zero tolerance

**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2021, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Edward P. Krugman